



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

January 27, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Michael Zak**  
Tax Registry No. 927697  
Gang Squad Staten Island  
Disciplinary Case No. 2015-14178

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on September 28, 2016, charged with the following:

**DISCIPLINARY CASE NO. 2015-14178**

1. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, improperly failed to wear a bullet-resistant vest while performing enforcement duty in civilian clothes and outside a Department facility.

**P.G. 204-18, Page 1, Paragraph 1**

**PROTECTIVE VEST  
UNIFORMS AND EQUIPMENT**

2. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, improperly failed to transmit the disposition or interim disposition to radio dispatcher immediately upon completion of an assignment and before leaving the scene of assignment.

**P.G. 202-23, Page 1, Paragraph 7**

**RADIO MOTOR PATROL  
RECORDER – DUTIES AND  
RESPONSIBILITIES**

3. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he stopped a vehicle without sufficient legal authority.

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT –  
PROHIBITED CONDUCT –  
GENERAL REGULATIONS**

**DETECTIVE MICHAEL ZAK**

**DISCIPLINARY CASE NO. 2015-14178**

4. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, abused his authority as a member of the New York City Police Department in that he frisked Person A without sufficient legal authority.

**P.G. 212-11**

**STOP AND FRISK – COMMAND  
OPERATIONS**

In a Memorandum dated November 4, 2016, Assistant Deputy Commissioner Jeff S. Adler found Detective Michael Zak Guilty of Specification Nos. 1, 2, 3 and 4, in Disciplinary Case No. 2015-14178. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Detective Michael Zak.

I have considered the totality of the issues and circumstances in this matter, and deem that a greater penalty is warranted. Therefore, Detective Zak shall forfeit five (5) vacation days, as a disciplinary penalty.

  
James P. O'Neill  
Police Commissioner





POLICE DEPARTMENT CITY OF NEW YORK

November 4, 2016

MEMORANDUM FOR: Police Commissioner

Re: Detective Michael Zak  
Tax Registry No. 927697  
Gang Squad Staten Island  
Disciplinary Case No. 2015-14178

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**Charges and Specifications:**

1. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, improperly failed to wear a bullet-resistant vest while performing enforcement duty in civilian clothes and outside a Department facility.  
P.G. 204-18, Page 1, Paragraph 1 – PROTECTIVE VEST  
UNIFORMS AND EQUIPMENT
2. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, improperly failed to transmit the disposition or interim disposition to radio dispatcher immediately upon completion of an assignment and before leaving the scene of assignment.  
P.G. 202-23, Page 1, Paragraph 7 – RADIO MOTOR PATROL  
RECORDER – DUTIES AND RESPONSIBILITIES
3. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he stopped a vehicle without sufficient legal authority.  
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED  
CONDUCT – GENERAL REGULATIONS
4. Detective Michael Zak, assigned to Gang Squad Staten Island, while on duty, on or about October 8, 2014, in Richmond County, abused his authority as a member of the New York City Police Department in that he frisked Person A without sufficient legal authority.  
P.G. 212-11 – STOP AND FRISK COMMAND OPERATIONS

**Appearances:**

For the Department: Samuel Yee, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Vincent Esposito, Esq.  
Karasyk & Moschella, LLP  
233 Broadway-Suite 2340  
New York, NY 10279

**Hearing Date:**

September 28, 2016

**Decision:**

Specifications 1-4: Guilty

**Trial Commissioner:**

ADCT Jeff S. Adler

**REPORT AND RECOMMENDATION**

The above-named member of the Department appeared before me on September 28, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Michael Moccia, Lieutenant Ryan McCartan and Sergeant Edward Martinez as witnesses, and introduced the recorded hearsay statements of Person A and retired Detective Person B. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

**DECISION**

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of each of the four specifications.



## FINDINGS AND ANALYSIS

At about 1400 hours on October 8, 2014, Person A, was driving his girlfriend's Mercedes Benz, which had Maryland license plates. Person A, who had a California driver's license, stopped at a red light at the intersection of Richmond Terrace and Clove Road in Staten Island. At that intersection, there was a sign that stated: AFTER STOP RIGHT TURN PERMITTED ON RED. Photos of the intersection, including the sign, were admitted into evidence through the testimony of Sergeant Michael Moccia (Dept. Ex. 1A-1C, and 2A-2D).

Despite having the option of turning on red, Person A remained at the light waiting for it to turn green. Respondent and his partner, Detective Person B, pulled up behind Person A's vehicle in an unmarked Honda. After having earlier executed a search warrant, the detectives now were transporting Desk Appearance Ticket ("DAT") packages from the 121 Precinct to 67 Targee Street. Detective Person B, the driver, honked his horn at Person A, but Person A still did not proceed through the red light. When the light turned green, Person A turned right onto Clove Road, and the detectives pulled him over. As Person A was exiting from his vehicle, Respondent observed a box cutter inside the car. Once Person A was outside the vehicle, Respondent conducted a pat down of Person A for weapons; none were recovered. At issue is whether there was sufficient legal authority to justify the stop and frisk of Person A.

Lieutenant Ryan McCartan, who was a sergeant with IAB at the time of the incident, testified that on October 17, 2014, he interviewed Person A at the office of Person A's attorney. During that interview, Person A provided a photograph he had taken of Respondent during the incident (Dept. Ex. 4). A recording of the interview, and the accompanying transcript, were admitted into evidence (Dept. Ex. 3 and 3A).



Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1<sup>st</sup> Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statement of Person A, and reviewed the accompanying transcript.

According to Person A, he didn't see the sign that permitted him to turn right on red. In the vehicle behind his, a Honda, the officers repeatedly honked their horn and were verbally abusive toward Person A for not turning. The light turned green, and Person A waited for a woman who was crossing in the intersection in front of him. As he was in the process of turning onto Clove Road, Person A noticed that one of the officers had exited the Honda and was approaching on foot. The officer pulled open the car door of the Mercedes as it was moving and told Person A to pull over, which he did. (Dept. Ex. 3A at 4-8)

Person A stated that both officers walked to his car and asked for his license and registration. Person A complied, and then one of the officers asked him to step out of the car. Person A described how once he was out of the vehicle, one of the officers, who Person A believed was Detective Person B, was "searching me, he's patting me down, he puts his hand in my pocket." The officers asked for the name of the owner of the car, but Person A

refused to provide it. Person A explained in his statement that since he did not trust the police, he decided not to answer their questions. (Dept. Ex. 3A at 10-14, 32)

Person A estimated that his encounter with police lasted “roughly an hour.” According to Person A, for a good portion of that time the officers had him remain on the ground on his knees. (Dept. Ex. 3A at 17, 24) Person A acknowledged he had a box cutter with him when he was pulled over, which the officers recovered from inside his vehicle. He explained that he used the box cutter for work. (Dept. Ex. 3A at 18) It was stipulated that in 2004, Person A faced sexual assault charges in Florida, and also was arrested for theft and resisting arrest in Maryland that same year; although the precise dispositions of these matters was unclear, the Department Advocate suggested that the sexual assault case may have been resolved with a misdemeanor battery conviction with a jail sentence of 11 months and 29 days time served.

Sergeant Edward Martinez testified that he interviewed Detective Person B on July 28, 2015. The detective is now retired, and so, as with the statement of Person A, the recorded two-part interview of Detective Person B was admitted into evidence, along with the accompanying transcripts. (Dept. Ex. 5, 5A-5B) Sergeant Martinez also testified that from his review of the SPRINT report for this incident (Dept. Ex. 8), the encounter began at 1406 hours, and the final disposition was made at 1448. The sergeant noted that as the recorder, it would have been Respondent’s responsibility to call in the final disposition. He also testified that as per the Patrol Guide, an officer performing enforcement duties must wear a vest, but there is no such requirement when the officer is “in the house on administrative duties.” (Tr. 52-54)



In his recorded statement, Detective Person B confirmed that he and Respondent conducted a car stop at approximately 1400 hours for disobeying a traffic sign. Detective Person B stated that he and Respondent pulled up behind Person A's vehicle, which had its right turn signal on. The detective honked his horn, but did not recall hearing other cars behind them honking. Detective Person B described Person A as "angry, yelling, screaming." The detective observed Respondent pat down Person A, but stated that Respondent did not search him. (Dept. Ex. 5A at 4-7, 10, 12) Person A threw himself on the ground in a kneeling position, where he apparently wanted to be videotaped. (Dept. Ex. 5B at 2)

Respondent testified that before the encounter with Person A, he and Detective Person B were involved in executing a search warrant. At that time, Respondent was wearing a heavy-duty vest, different than the normal vest. After that operation was completed, Respondent and Detective Person B were assigned to deliver DAT packages. As such, Respondent took off the vest and placed it in the trunk of the car. Respondent did not have his regular vest with him, so at the time of the car stop he was not wearing a vest. He and Detective Person B were in civilian clothes riding in a Honda, and Respondent was the recorder. (Tr. 60-62, 80)

As they approached the intersection of Richmond Terrace and Clove Road, they pulled behind Person A's vehicle which was stopped at the red light. A sign at the intersection permitted a right turn on red. Cars behind Respondent's vehicle started honking, and the detectives honked their horn as well. Respondent leaned his head out the window and told Person A he could make a right on red, but Person A just cursed at him. Respondent decided to pull Person A over "for not making the right turn, and as a result of that obstructing vehicular traffic." When Person A finally made the turn, Respondent exited



his vehicle, approached Person A's car on foot, and directed him where to pull over. (Tr. 63-66)

Respondent testified that Person A produced his driver's license, but refused to provide the registration and insurance, instead telling Respondent, "F you, that's your job, you figure it out." Respondent described Person A as "combative, irate, histrionic, and abusive." As Person A was stepping out of the car, Respondent observed a box cutter on the floor of the vehicle near Person A's feet. Person A explained that he used the box cutter for work. According to Respondent, the presence of the box cutter combined with Person A's combative behavior and evasiveness led the detective to fear for his safety. Respondent admitted to frisking Person A, explaining that once Person A was out of the car, the detective patted down Person A without going inside his pockets. Specifically, Respondent patted Person A's waist, legs, and the small of his back. (Tr. 67-71, 83-85, 88, 91, 94)

Respondent testified that it took a while to calm down Person A, who dropped to his knees hoping that a bystander would record his interaction with the police. The detectives did not issue a summons or traffic citation to Person A, but did warn and admonish him before allowing him to leave. Once the detectives were back in route to deliver the DAT paperwork, Respondent called in the disposition on the matter. (Tr. 73-74, 77, 82) Respondent estimated that the entire encounter lasted approximately 10 minutes, "give or take a few minutes." (Tr. 92)

Specification 3 alleges that Respondent stopped Person A's vehicle without sufficient legal authority. Respondent's justification for the stop was that Person A was improperly obstructing vehicular traffic, in violation of section 4-07 (b) of the Traffic Rules of the City of New York. That section provides: "No person shall operate a vehicle



in a manner which obstructs traffic in lanes specifically designated for the movement of traffic.” According to Respondent, Person A created such an obstruction by not turning right on red, causing traffic to back up behind him.

However, it is undisputed that the sign at the intersection was permissive, rather than mandatory. It stated: “AFTER STOP RIGHT TURN PERMITTED ON RED”. As such, Person A was well within his rights not to make the turn until the light turned green and the intersection was clear. Notably absent from Respondent’s testimony and the statement of Detective Person B was any mention as to whether the traffic conditions at the intersection at the moment would have permitted Person A to make the turn on red with complete safety. Indeed, when the light did turn green, Person A stated he waited for a woman pedestrian to finish crossing in front of him, and then proceeded to make his turn, at which point he was pulled over by Respondent. The stop lacked sufficient legal authority, and I find Respondent guilty of Specification 3.

Specification 4 alleges that Respondent improperly frisked Person A after the car stop. It is undisputed that Respondent did frisk Person A after he had Person A exit his vehicle. Person A described a thorough frisk, and Respondent confirmed that he did, indeed, frisk Person A in the waist area, legs, and small of his back. Additionally, Detective Person B stated that Respondent patted down Person A. The issue is whether the frisk was legally justified.

The relevant Patrol Guide Section from the date of the incident, Section 212-11, provided that a uniformed member of the service may frisk an individual if the officer reasonably suspects that he or others are in danger of physical injury. Here, Respondent failed to articulate a reasonable suspicion to justify a frisk of Person A. Respondent argued that Person A’s combative and evasive behavior, combined with the box cutter near Person A’s



feet in the vehicle, justified a protective frisk. This tribunal is mindful that by being evasive about who owned the car, Person A may well have aggravated the situation. Even so, there was no reasonable basis for Respondent to conclude that he or others were in danger of physical injury. At the point of the frisk, Person A already had been safely removed from the car. He did not make any movements to his waist. Other than the legal box cutter in the vehicle, there was no display of any weapons, no suspicious bulges visible in Person A's clothing. It is true that Person A cursed at Respondent when asked who was the owner of the car, but he did not make any statements suggesting he was going to use a weapon on Respondent. The stop, itself, was not for suspicion of committing a violent crime. Under the totality of circumstances, there was not a sufficient legal basis for frisking Person A, and I find Respondent guilty of Specification 4.

Additionally, Respondent is charged with not wearing a bullet-proof vest at the time of the encounter, and failing to transmit a disposition for the incident in a timely manner. Specification 1 alleges that Respondent improperly failed to wear a bullet-resistant vest while performing enforcement duty. Section 204-18 (1) (b) of the Patrol Guide provides that a uniformed member of the service "MUST wear a protective vest, outside a Department facility, when...performing enforcement duty in civilian clothes." Again, there is no dispute that Respondent was not wearing a vest at the time of his street encounter with Person A. By his own admission, Respondent had removed his vest, a heavier version of the one normally used, after he completed the execution of a search warrant earlier in his shift. Respondent argued that he was delivering DAT packages at the time of the car stop, an administrative task, and therefore was not required to be wearing a vest.



However, once Respondent initiated the car stop, he was engaged in enforcement duty, and the fact that he did not even have with him a standard vest he could put on became hazardous. Respondent chose to exit his own vehicle and approach Person A's car, and ordered Person A to pull over. Once Person A complied, Respondent requested information from the motorist, removed him from the car, and frisked him. The encounter moved well beyond the performance of an "administrative task," and strictly speaking, Respondent was required to wear a vest. Since Respondent failed to do so, I find him guilty of Specification 1.

Specification 2 charges Respondent with failing to transmit a disposition in a timely manner. Section 202-23 (7) requires a recorder to transmit a disposition to the radio dispatcher "immediately upon completion of assignment and before leaving the scene of assignment." The initial stop here occurred at approximately 1406 hours. The time of the final disposition was approximately 1448 hours. Respondent estimated that the entire encounter lasted about 10 minutes. Person A, though, stated that he was stopped for roughly one hour. Even if the actual length of the stop was somewhere between those two estimates, the more significant issue is whether Respondent, who was the recorder, transmitted the disposition before leaving the scene. When asked about when he called in the disposition, Respondent testified: "I believe it was en route to 67 Targee to drop off the paperwork." In light of that admission, the record has established, by a preponderance of the credible evidence, that Respondent waited until after he left the scene before transmitting a disposition, and I find him guilty of Specification 2.



## PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on September 29, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.

Respondent has been found guilty of all four specifications. Specifically, he conducted a car stop, and frisked the vehicle's occupant, without sufficient legal authority. Additionally, Respondent was not wearing a bullet-resistant vest, and failed to transmit a disposition for the car stop in a timely manner.

The Department Advocate asks that Respondent forfeit five (5) vacation days as an appropriate penalty. Counsel for Respondent argues for a lesser penalty. Regarding the vest charge, counsel correctly notes that Respondent initially was on an administrative assignment, and the car stop was unexpected. With respect to the late disposition charge, counsel argues that since Respondent was on an administrative assignment and not in an RMP at the time, his delay in transmitting the disposition did not cause any radio backlog or delay in police services. Indeed, if the only two charges were for the vest and the radio transmission, Counsel's argument might have been more persuasive. But the improper stop and frisk call for the imposition of a slightly higher penalty, though not as high as that sought by the Advocate.

In *Disciplinary Case Nos. 14064/15, 14062/15, 14060/15* (Sept. 13, 2016), a 14 year officer, 8-year detective, and 9-year detective each negotiated a penalty of one (1) vacation day for stopping a vehicle without sufficient authority and frisking and

searching the driver. In *Disciplinary Case Nos. 11361/14 and 11362/14* (Mar. 25, 2015), two 10-year officers with no disciplinary history each forfeited three (3) vacation days for stopping a vehicle and frisking the driver without sufficient legal authority.

Taking into account the totality of the circumstances in this matter, including the four specifications of which Respondent is guilty, Respondent's disciplinary history, and the legal precedent, I recommend that Respondent's penalty be the forfeiture of two (2) vacation days.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials







POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE MICHAEL ZAK  
TAX REGISTRY NO. 927697  
DISCIPLINARY CASE NO. 2015-14178

Respondent was appointed to the Department on September 29, 2000. On his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent." He has been awarded three medals for Excellent Police Duty. [REDACTED]

He has no prior formal disciplinary history.

Jeff S. Adler  
Assistant Deputy Commissioner Trial